



**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, OMAHA DISTRICT**  
1616 Capitol AVE  
OMAHA, NEBRASKA 68102-9000

Renschler/255-0015  
[NWO-2014-2177-BIS]

July 25, 2016

Mr. Joey Mahmoud, SVP  
Dakota Access, LLC  
1300 Main  
Houston, Texas 77002

Dear Mr. Mahmoud:

We have reviewed your request for Department of the Army (DA) authorization for the pre-construction notifications (PCN's) that were submitted to this office for the Dakota Access Pipeline project. The PCN's are for the North Dakota segment of the proposed 1,168-mile crude oil pipeline project, of which approximately 358-miles are within North Dakota. The proposed Missouri River crossings will each be horizontal directional drilled (HDD), 36-foot and 92-foot below the river bed. The HDD entry and exit pits would be located on uplands, outside the river banks. The pipeline crossings will be located Sections 30 and 29, Township 152 North, Range 103 West, Williams and McKenzie Counties and Sections 10 and 11, Township 134 North, Range 79 West, Morton and Emmons Counties, North Dakota, at approximate Missouri River mile 1576.8 and 1270.0.

Based on the information provided to this office, it has been determined that this project and associated work is authorized by Department of the Army Nationwide Permit No. 12 found in the February 21, 2012 Federal Register (77 FR 10184), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General, Regional and Special Conditions that must be adhered to for this authorization to remain valid.

This determination is applicable only to the permit program administered by the US Army Corps of Engineers. It does not eliminate the need to obtain other applicable Federal, State, Tribal and local permits as required. Please note that deviations from the original plans and specifications of the project could require additional authorization from this office.

In accordance with General Condition 27, you must comply with the following special conditions:

1. The permittee shall comply and implement the plans described in the Pre-Construction Notifications (PCNs) dated December 29, 2014 (North Dakota) and subsequent addendums. The plans were included in the application package that was submitted including subsequent information and included the HDD crossing plans, HDD Contingency Plan, Spill Prevention, Containment and Countermeasures Plan, and others listed.

2. Tribal Monitoring: Dakota Access shall offer Tribal Monitoring for all PCN areas in North Dakota. The monitoring shall be in accordance with the attached Monitoring Plan.

3. Drawings/photographs/location maps of the restored wetlands and stream bodies will be submitted to the District Engineer (DE) within 90 days of completing restoration activities along the entire pipeline route. The drawings must include a list of species planted, the location of all plantings, cross-sectional drawings of the planting schemes and the boundaries of the temporary impacts and restoration activities, as applicable.

4. If excavation and construction are completed outside an optimal seeding period, temporary erosion control measure shall be implemented immediately upon completion of excavation and construction and shall be maintained until such time as wetland plantings can be completed during an optimal period. The permanent wetland plantings shall then be completed during the next optimal seeding period.

5. Nationwide Permit General Condition No. 12 of the attached Nationwide Permit Fact Sheet states: "Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow".

6. The unaffected waters of the U.S. delineated within the adjacent project area must be protected during land leveling and construction activities. The jurisdictional wetlands and stream channels may not be graded or used as staging areas, temporary crossings, temporary fill sites, etc., without prior authorization from the Corps of Engineers. Prior to the commencement of any physical work within the designated construction right-of-way, wetlands and waterbodies that are to remain undisturbed shall be clearly marked in the field and identified to the heavy equipment operators.

7. Removal of vegetation, including trees located in or adjacent to waters of the United States, shall be limited to that which is absolutely necessary for construction of this project. All woody debris shall be removed to an upland, non-wetland site.

8. All temporary impacts to waters of the United States, including wetlands, rivers, and streams, shall have sidecast material returned to the excavation site or removed within 90 days of the initial ground disturbance. Topsoil segregation piles and temporary construction travel lanes may remain until restoration is complete.

9. The applicant shall notify the District Engineer if extra workspace areas used for equipment and material staging and spoil storage are located in waters of the U.S. not previously identified in the application or design plans.

10. You are encouraged to conduct your construction activities during periods of low flow. Any disturbed areas shall be restored to pre-project conditions and grades and replanted with permanent perennial native grasses and forbs and a nurse crop of annual rye or oats.

11. Any land use conversion within the wetland and stream restoration/mitigation areas which may interfere with or be detrimental to the functions and values of these aquatic resources, is prohibited.

12. In wetlands, the top 12 inches of the trench shall be backfilled with the top 12 inches of topsoil excavated from the trench. All sidecast material shall be used as backfill in the trench or removed as excess material from the wetland to an upland disposal site. Backfilling with the sidecast material shall allow for soil settlement that could occur over an 18 to 24 month period. The maximum temporary crown allowed over the trench is 12 inches. All material beyond this 12-inch temporary crown is considered excess material.

13. You shall utilize timber mats, prefabricated equipment mats, and/or low-ground-pressure equipment in wetlands to minimize disturbance. Other than the temporary mats, this permit does not authorize the placement of fill material in wetlands for the construction of access roads and pads.

14. You are responsible for insuring that whoever performs, supervises, or oversees any portion of the physical work associated with the construction of the project has a copy of, is familiar with, and complies with all the terms and conditions of this permit.

15. The permittee must receive written approval from the District Engineer before proceeding with any alternative installation methods that are not described in the previously submitted plans with your application. For example, if you are unable to directionally drill under the Missouri River, including Lake Oahe or other previously designated waterways, you must provide written notification to our office and receive approval for any alternative method. This may require a new permit review and an Individual Permit.

16. You shall restore all temporary impacts to waters of the United States (including wetlands, streams, and rivers) to their pre-impact condition within 90 days of the initial ground disturbance (grading and/or excavation).

17. You shall perform the authorized work and restore the construction area in segments to limit the amount of area disturbed at any one time and to speed the establishment of vegetation.

18. The permittee understands and agrees that if future operation by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the

structural work obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

19. The facility shall not prohibit or interfere with future work, construction of weirs, or dikes, undertaken by the United States Government for navigation purposes.

20. The permitted structures shall be removed, at no cost to the United States Government, when deemed necessary for actions required by the United States Government (bankline repairs, construction of new structures, dredging, etc.).

21. Nationwide Permit General Condition No. 21 of the attached Nationwide Permit Fact Sheet states: "If you discover any previously unknown historic, cultural or archaeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places"

22. The permittee will perform any corrective measures deemed necessary by the DE to insure the success of the wetland and stream restoration measures.

Dakota Access is responsible for all work accomplished in accordance with the terms and conditions of this nationwide permit. If a contractor or other authorized representative will be accomplishing the work authorized by this nationwide permit, it is recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the nationwide permit. Failure to comply with all the terms and conditions of this authorization may result in an enforcement action.

In compliance with General Condition 30, the attached Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

This verification will be valid until **March 18, 2017**. If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. All of the existing nationwide permits are scheduled to be modified, reissued, or revoked prior to March 18, 2017. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice when the nationwide permits are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our customer service survey found on our website at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey). If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination, please contact Mrs. Patricia McQueary by letter or telephone at (701) 255-0015 ext. 2001 and reference Nationwide Permit number **NWO-2014-2177-BIS**.

Sincerely,



Martha S. Chieply  
Chief, Regulatory Branch  
Omaha District

Enclosure

- Fact Sheet #12
- Compliance Certification
- Monitoring Plan

**COMPLIANCE CERTIFICATION**

**Permit File Name:** Dakota Access Pipeline. 1,168-miles (358 in ND) of a new 12-inch to 30 inch crude oil pipeline from Stanley, ND to Patoka, IL.

**Action ID:** NWO-2014-02177-BIS

**Nationwide Permit Number:** NWP 12 Utility Line Activities.

**Permittee:** Dakota Access, LLC  
Attn: Mr. Joey Mahmoud  
1300 Main Street  
Houston, Texas 77002

**County:** Williams/McKenzie and Morton/Emmons.

**Date of Verification:** July 25, 2016

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers, Omaha District  
North Dakota Regulatory Office  
1513 South 12<sup>th</sup> Street  
Bismarck, North Dakota 58504  
[CENWO-OD-RND@usace.army.mil](mailto:CENWO-OD-RND@usace.army.mil)

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the U.S. Army Corps of Engineers.

\* \* \* \* \*

*I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.*

\_\_\_\_\_  
Permittee Signature

\_\_\_\_\_  
Date

## **Omaha District (North Dakota) Tribal Monitoring Plan for Dakota Access Pipeline (DAPL)**

- A. The objective of the tribal monitoring program is to develop a reasonable monitoring process while minimizing the potential for adverse effects from project activities to sites of religious and cultural significance. This plan provides guidelines to assist in the decision making process when consulting with the Tribes and to implement an effective communication system.
- B. Verification of these Pre-Construction Notifications (PCN) for Nationwide Permit #12 are dependent on compliance with Section 106 regulations. Since the Tribe has specialized historical knowledge regarding their lands, cultural resources and materials, the applicant shall allow a tribal monitor to be present on-site for PCNs: 2 and 4.
1. Concurrent with and in coordination with the tribal monitoring, DAPL will provide archaeological monitors at these 2 PCNs as well. Both DAPL and the tribes are encouraged to work together to supplement and possibly staff the monitoring effort with tribal monitors to be present with DAPL monitors. Any tribal monitoring outside the formal DAPL archaeological monitoring will not be reimbursed by DAPL unless DAPL approves the monitors to be staffed as part of the monitoring team. If tribes desire to have additional monitors onsite during construction, they will be provided access. DAPL will notify each tribe that expresses interest in participating in monitoring of the construction schedule for each PCN listed above.
  2. In response to the notification, the THPO shall provide the name and contact information for the tribal monitor that will be present, no later than 5 days before proposed construction dates. If a response is not received by the applicant, then the applicant shall notify the Omaha District Regulatory Chief that construction at the site will proceed without a tribal monitor. The Omaha District Regulatory Chief may choose to send a District Archaeologist to be present and will notify DAPL at that time. However, if a tribal monitor is present on the day of construction, even if no response was received by the applicant, then the monitor shall be allowed onsite for all permitted grubbing, trenching, grading or land disturbances; subject to conditions outlined below.
- C. In general, tribal monitors are representatives of the Tribe and are present to monitor PCN areas during the ground disturbing activities related to construction. The areas to be monitored may have cultural significance and may have been identified as a result of Cultural Resource Surveys and Inventories, Tribal Cultural Property Studies, and the Section 106 Consultation process. The monitors should have adequate training and/or experience regarding local historic and prehistoric Native American village sites, culture, religion, ceremony and burial practices. However, tribal officials are ultimately responsible for vetting the qualifications of the tribal monitors whom they choose to represent their Tribe. Tribal monitors must stay within the designated construction areas and not trespass off the construction right-of-way. There will be clear lines of communication among the tribal monitors, the DAPL archaeological monitor, the Omaha District representatives, and the onsite DAPL Construction Manager and Environmental Inspector.

1. Tribal monitors will coordinate all initial efforts through the designated tribal liaison from DAPL. Onsite, the DAPL archaeological monitor will take the lead to inform the DAPL personnel in charge (the Construction Manager and the Environmental Inspector) of any discoveries. In the event of a discovery, the tribal monitor will work with the DAPL archaeological monitor to contact the onsite DAPL Construction Manager and Environmental Inspector who will contact a DAPL archaeologist or DAPL Project Manager (PM). At this time the protocols included in the Unanticipated Discoveries Plan (UDP) shall be implemented. In addition, the DAPL archaeologist or PM will contact the Omaha District Regulatory Chief (phone #402-926-9613) or designated alternate (phone #701-204-3443) and the North Dakota State Historic Preservation Officer (SHPO) to start the evaluation and mitigation process, if needed. If any problems arise that cannot be resolved, the Omaha District Regulatory Chief or designated alterante shall be contacted to help resolve the issue.
2. Tribal monitors must abide by all OSHA safety rules and wear protective equipment at all times while on site. Assistance is to be provided by construction personnel, to facilitate access as required by OSHA regulations. This may include pumping water from excavations, shoring of trenches or other actions mandated by OSHA regulations for workers.
3. On any day where a tribal monitor will be present on-site, the monitor must be present at any applicable pre-work briefing for safety and hazard presentations and participate in DAPL safety training and wear protective equipment at all times while on site. All construction monitors, inclusive of DAPL staff and consultants, tribal monitors, and Omaha District personnel will be required to adhere to DAPL's safety guidelines and must attend the daily safety meeting and be outfitted with proper personal protective equipment including steel toe boots, hard hat, safety vest and safety glasses. Each person is responsible for having their own personal protective equipment. Any person not having such equipment or not attending a safety meeting will not be allowed on the construction site. Construction will not be delayed, altered, or stopped in the event any person fails to attend the daily safety meeting or have proper personal protective equipment. In the event a monitor from the tribes, from DAPL or from the Omaha District does not adhere to the safety program and is not allowed access or is removed, the Omaha District Regulatory Chief (phone #402-926-9613) or designated alternate (phone #701-204-3443) will be notified within 24 hours.

#### **D. On-site Monitoring Plan**

1. During ground-disturbing activities the tribal monitor will provide assistance to the DAPL archaeological monitor, the DAPL Construction Manager and the DAPL Environmental Inspector with the identification of sites of religious and cultural significance to the Tribes. No access to areas outside of the PCN boundary will be allowed.
2. It is the responsibility of DAPL to avoid disturbance to archaeological resources and human remains. The DAPL archaeological monitor will be



responsible for actively observing and reporting any cultural artifact or human remains found either on the surface or subsurface within the PCN. The tribal monitor is responsible for assisting the DAPL archaeological monitor in identifying possible sites of religious and cultural significance and also will assist in observing and reporting any cultural artifact or human remains within the PCN and will then notify the DAPL archaeologist.

3. The combined authority of the tribal monitor in conjunction with the DAPL archaeological monitor to temporarily halt ground disturbance operations in the area of a discovery to allow evaluation of potentially significant cultural resources shall be clearly conveyed to all levels of the on-site excavation team, including the equipment operators. The tribal monitor, in conjunction with the DAPL archaeologist and the DAPL Environmental Inspector, shall determine if a discovery is significant enough to require further investigation. The time period allowed will be in direct proportion to the significance of the find. In any event or find, physical evidence of a find must be observed and documented.
4. If incidental or demonstrably non-NRHP (National Register for Historic Preservation) eligible cultural materials or features are discovered during construction, the tribal monitor working with the DAPL archaeological monitor will temporarily stop work at that location and notify the DAPL Environmental Inspector. The DAPL archaeological monitor in conjunction with the tribal monitor will note the material and its position and placement. Work may only be stopped long enough to determine if the find is significant. Non-NRHP materials may include – but are not limited to – isolated pre-contact or historic period artifacts, and cultural materials younger than 50 years old. A non-NRHP eligible artifact encountered will not be collected or analyzed unless it is diagnostic to a culture or time period or indicative of significant archaeological deposits. When the find is deemed to be not significant by the tribal monitor, the DAPL archaeological monitor and the DAPL Environmental Inspector, excavation will resume.
5. If potentially NRHP eligible cultural resources or human remains are discovered, the tribal monitor in coordination with the DAPL archeological monitor will immediately halt work at that location and notify the DAPL Environmental Inspector and the DAPL Construction Manager. The site will immediately be protected by the Environmental Inspector according to the UDP and notifications initiated according to the UDP. Work may resume outside the buffer around the discovery site. This buffer shall be at least 100' radius and of a size adequate to provide for the security, protection, and integrity of materials.
6. The tribal monitor, DAPL, and all DAPL contractors are required to adhere to the Unanticipated Discoveries Plan for Cultural Resources, Human Remains, Paleontological Resources & Contaminated Media - North Dakota, and report to the Omaha District Regulatory Chief (phone #402-926-9613) or designated alternate (phone #701-204-3443) if an archaeological or cultural resource is discovered.

7. If significant cultural resources are encountered, the tribal monitor shall be given primary deference in method of handling artifacts and remains, in coordination with SHPO, the landowner and any other persons having jurisdiction over human remains (e.g. coroner or sheriff), unless such items are deemed by the DAPL archeological monitor and the tribal monitor to be not related to tribal occupation, tribal cultural resources or tribal burials. On private land, if the landowner wishes to take possession of the artifacts (excluding human remains and funerary objects), then all parties involved will adhere to the landowner's request. In the event of an inadvertent discovery of human remains, protocols listed in the UDP shall be followed.
- E. Credentials and qualifications of the tribal monitors shall be within the purview of the individual Tribes. The individuals selected will be officially recognized by the Tribe as having the capabilities to perform the duties as described in the job description. It is anticipated that the Tribe will administer the activities of the monitors from a tribal perspective. Tribes can also contract out monitoring work to other Native American Tribes who have qualified staff provided that each Tribe officially delegates such authority in writing, stating that they endorse the candidate.
  - F. The Omaha District and the Tribes have agreed through the consultation process upon the extent of and locations of tribal monitoring. Tribal monitoring will be conducted on PCNs identified by the Tribes as having significance to that Tribe, areas identified by Traditional Cultural Properties Inventories and Studies, and areas identified by Tribes during the Section 106 process. In the Omaha District, the following PCNs shall have tribal monitors allowed onsite: 2 and 4.
  - G. It will be the responsibility of the DAPL Construction Manager to contact, in person, or via email, text, or telephone, the tribal monitor(s) or Omaha District Regulatory Chief (phone #402-926-9613) or designated alternate (phone #701-204-3443) and notify them of emergencies or potential emergencies affecting the PCN areas, such as inclement or violent weather.
  - H. Tribal monitors will be required to complete daily logs and submit weekly activity reports to the Omaha District Regulatory Chief and tribes participating in monitoring for that site that describe the PCN areas monitored. In addition to describing the area(s) monitored, they will describe activities monitored and describe any issues or concerns that were encountered and how those were resolved. In addition, any reports completed by a qualified archaeologist shall be forwarded to the Omaha District Regulatory Chief upon completion of the report. The weekly monitoring reports will be treated as confidential documents. The Tribe may elect to share information with other consulting Tribes.
  - I. The tribal monitor will not remove cultural or other material at any PCN. All material, whether deemed NHRP eligible or not shall not be removed except under procedures outlined in the UDP. Cultural material identified in a PCN area on private land is the property of the landowner except human remains and funerary objects. No-one, except police and coroner staff, is authorized to remove human remains or funerary objects at any PCN.

**FACT SHEET  
NATIONWIDE PERMIT 12  
(2012)**

**UTILITY LINE ACTIVITIES.**

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liqescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as

near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate. (Sections 10 and 404)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e. water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 31.)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 4: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

## **Nationwide Permit General Conditions**

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

**1. Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

**3. Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**6. Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

**7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**8. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

**10. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**15. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**16. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**17. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**18. Endangered Species.** (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical

habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.

**20. Historic Properties.** (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those



tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**21. Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

**22. Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**23. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or

parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

**24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

**25. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality. *Specifically for North Dakota, the North Dakota Department of Health has denied water quality certification for all projects proposed to affect Class 1 and 1a rivers or classified lakes, individual certification must be obtained. For project proposed to affect any other waters, the North Dakota Department of Health has issued water quality certification provided the attached Construction and Environmental Disturbance Requirements are followed.*

**26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

**31. Pre-Construction Notification—(a) Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either: (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or (2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition

20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any

consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWP's 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information: (1) Name, address and telephone numbers of the prospective permittee; (2) Location of the proposed project; (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans); (4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate; (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act. (c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also

be used. (d) *Agency Coordination*: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. (2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. (3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction notifications to expedite agency coordination.

### **Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

**2012 Nationwide Permits  
Regional Conditions  
Omaha District  
State of North Dakota**

The following Nationwide Permit regional conditions will be used in the State of North Dakota. Regional conditions are placed on Nationwide Permits to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns.

**Wetlands Classified as Peatlands – Revoked for Use**

All Nationwide Permits, with the exception of 3, 5, 20, 32, 38 and 45, are revoked for use in peatlands in North Dakota.

Peatlands are saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Peatlands can be primarily classified into ombrotrophic bogs and minerotrophic fens; the latter subdivided into poor, moderate-rich, and extreme-rich fens, each with distinctive indicator species, community physiognomy, acidity, alkalinity, and base cation content.

**Wetlands Classified as Peatlands – Pre-construction Notification Requirement**

For Nationwide Permits 3, 5, 20, 32, 38, and 45 permittees must notify the Corps in accordance with General Condition 31 (Notification) prior to initiating any regulated activity impacting peatlands in North Dakota.

**Waters Adjacent to Natural Springs – Pre-construction Notification Requirement**

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in North Dakota. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

**Missouri River, including Lake Sakakawea and Lake Oahe within the State of North Dakota – Pre-construction Notification Requirement**

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity in the Missouri River, including Lake Sakakawea and Lake Oahe, within the State of North Dakota.

### **Borrow Site Identification – All Nationwide Permits**

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

### **Counter-sinking Culverts and Associated Riprap – All Nationwide Permits**

That culverts and riprap proposed to be installed within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota shall be installed one foot below the natural streambed. The 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: [http://www.nwo.usace.army.mil/Portals/23/docs/regulatory/ND/gen/nd\\_streams\\_readable.pdf](http://www.nwo.usace.army.mil/Portals/23/docs/regulatory/ND/gen/nd_streams_readable.pdf)

## **REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS**

### **Nationwide Permit 7 – Outfall Structures and Associated Intake Structures and Nationwide Permit 12 – Utility Line Activities**

**Intake Structures** - Intake screens with a maximum mesh opening of 1/4-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed 1/2-foot per second.

Pumping plant sound levels will not exceed 75 dB at 50 feet.

Intakes located in Lake Sakakawea, above river mile 1519, are subject to the following conditions:

- The intakes shall be floating.
- At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
- If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.
- If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to 1/4 foot per second.

Intakes located in Lake Sakakawea, below river mile 1519, and in the Missouri River below Garrison Dam are subject to the following conditions:

- The intakes shall be submerged.
- At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
- The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
- If the 20-foot depth is not attainable, then the intake velocity shall be limited to 1/4-foot per second with the intake placed at the maximum practicable attainable depth.



### **Nationwide Permit 11 – Temporary Recreational Structures - Boat Docks**

- a. If future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
- b. No boat dock shall be located on a sandbar or barren sand feature located in or along the banks of the Missouri River.
- c. The farthest point riverward on the dock located on the Missouri River proper shall not exceed a total length of 30 feet from the ordinary high water line found along the high bank out into the River. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.
- d. Any boat dock located on the Missouri River shall be anchored to the top of the high bank.
- e. Any boat dock located within an excavated bay or marina off the main river channel may be anchored to the bay or marina bottom with spuds.

### **Nationwide Permit 13 - Bank Stabilization**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota.

### **Nationwide Permit 23 - Approved Categorical Exclusions**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota. In addition to information required by General Condition 31, permittees must identify the approved categorical exclusion that applies and provide documentation that the project fits the categorical exclusion.

### **Nationwide Permit 27 - Aquatic Habitat Restoration, Establishment and Enhancement Activities**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota.

## **GENERAL CONDITIONS (REGIONAL ADDITIONS)**

### **General Condition 3- Spawning Areas**

No regulated activity within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota or on the North Dakota Game and Fish Department's website as a North Dakota Public Fishing Water shall occur between 15 April and 1 June. No regulated activity within the Red River of the North shall occur between 15 April and 1 July. North Dakota Public Fishing Waters can be accessed at: <http://gf.nd.gov/fishing/where-to-fish>. The 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: [http://www.nwo.usace.army.mil/Portals/23/docs/regulatory/ND/gen/nd\\_streams\\_readable.pdf](http://www.nwo.usace.army.mil/Portals/23/docs/regulatory/ND/gen/nd_streams_readable.pdf).

### **General Condition 6 – Suitable Material**

Permittees are reminded that General Condition No. 6 prohibits the use of unsuitable material. In addition, organic debris, some building waste, and materials excessive in fines are not suitable material. Specific verbiage on prohibited materials can be accessed on the North Dakota Regulatory Office's website at: <http://www.nwo.usace.army.mil/Portals/23/docs/regulatory/ND/gen/prohibitionpnJuly2011.pdf>.

### **General Condition 9 - Management of Water Flows**

Permittees are reminded that water flow management addressed in General Condition 9 is applicable to all aspects of a permitted project, including temporary features.

### **General Condition 31 – Pre-construction Notification**

Prospective permittees should be aware that a **field delineation** may be required for applications where notification is required in accordance with General Condition 31 and/or mitigation may be required. The Corps 1987 Wetland Delineation Manual and applicable Regional Supplements to the Manual can be accessed on the North Dakota Regulatory Office's website at: <http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/NorthDakota.aspx> .